

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN AVILA GUTIERREZ,

Petitioner,

v.

WARDEN, F.C.I. HERLONG,

Respondent.

No. 2:23-cv-00646-DAD-AC (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION FOR FAILURE TO
STATE A COGNIZABLE CLAIM

(Doc. No. 8)

Petitioner Juan Avila Gutierrez is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 24, 2023, the assigned magistrate judge screened the pending petition, found that it failed to state a cognizable claim for relief under 28 U.S.C. § 2241, and granted petitioner leave to file an amended federal habeas petition to attempt to cure the noted deficiencies within thirty days. (Doc. No. 6 at 2–3.) Petitioner was specifically warned that his failure to file an amended petition would result in a recommendation that this action be dismissed. (*Id.* at 3.) Petitioner did not file an amended petition within the time provided. Nonetheless, on July 17, 2023, the magistrate judge issued an order granting petitioner twenty-one days from the date of that order to file an amended petition and again warning him that his failure to do so would result in a

1 recommendation that this action be dismissed. (Doc. No. 7.) Once again, petitioner did not file
2 an amended petition and did not respond in any way to the court's order.

3 Consequently, on September 11, 2023, the magistrate judge issued the pending findings
4 and recommendations recommending that petitioner's federal habeas petition be dismissed for
5 failure to state a cognizable claim for relief under 28 U.S.C. § 2241. (Doc. No. 8.) Those
6 findings and recommendations were served upon the parties and contained notice that any
7 objections thereto were to be filed within fourteen days after service. (*Id.* at 2.) To date,
8 petitioner has not filed any objections to the pending findings and recommendations and the time
9 in which to do so has long since passed.

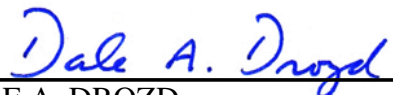
10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
11 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
12 pending findings and recommendations are supported by the record and proper analysis.

13 Accordingly,

- 14 1. The findings and recommendations issued on September 11, 2023 (Doc. No. 8) are
15 adopted in full;
- 16 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed due to petitioner's
17 failure to state a cognizable claim under 28 U.S.C. § 2241¹; and
- 18 3. The Clerk of the Court is directed to close this case.

19 IT IS SO ORDERED.

20 Dated: **December 11, 2023**

21 
22 DALE A. DROZD
23 UNITED STATES DISTRICT JUDGE
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27 ¹ Because petitioner is a federal prisoner bringing a § 2241 petition, a certificate of appealability
28 is not required. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) ("The plain language
of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to obtain a COA in order to appeal the
denial of a § 2241 petition.").